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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,558	10/24/2001	Shimei Fan	J6650(C)	7685

201 7590 05/13/2004

UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

JIANG, SHAOJIA A

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/001,558

Applicant(s)

FAN ET AL.

Examiner

Shaojia A Jiang

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☒ Applicant's reply has overcome the following rejection(s): the rejection under 35 U.S.C. 112, first paragraph for new matter.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

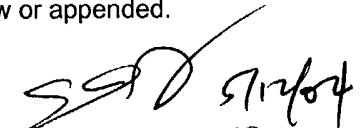
The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-7, 13-17, 19-22, 26 and 27.

Claim(s) withdrawn from consideration: 23-25.


SHAOJIA ANNA JIANG
PATENT EXAMINER

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Art Unit: 1617

Advisory Action

This Office Action is a response to Applicant's proposed amendment and response after FINAL filed on April 29, 2004.

2. Applicant's proposed amended claims 1-7, 13-17, 19-22 and 26-27 are not deemed to place the application in better form for appeals by materially reducing or simplifying the issues for appeal. More importantly Applicant's proposed amendment does not please the application in conditon for allowance as further discussed below.

5. The rejection of Claims 1-7, 13-17, 19-22 and 26-27 made under 35 U.S.C. 103(a) as being unpatentable over Reid et al. (USPN 5,085,857) in view of Porter et al. (of record) for reasons of record stated in the Final Office Action dated April 7, 2004 is maintained.

Applicant's remarks/arguments filed on April 29, 2004 with respect to this rejections of record, have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated April 7, 2004.

Again, one of ordinary skill in the art would acknowledge that ethoxylated alkanolamides are well known and art recognized properties for improving dispersability and/or solubility in water as clearly taught at Handbook of surfactants (see the Handbook of surfactants, page 146 "General properties"), therefore resulting in a more uniform emulsion. Moreover, as discussed in the previous Office Action, Applicants aver unexpected benefits residing in the claimed subject matter, yet fail to set forth evidence

substantiating this belief. Evidence as to unexpected benefits must be "clear and convincing" *In re Lohr*, 137 USPQ 548 (CCPA 1963).

Note that arguments of counsel cannot take the place of factually supported objective evidence. See, e.g., *In re Huang*, 100 F.3d 135, 139-40, 40 USPQ2d 1685, 1689 (Fed. Cir. 1996); *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984).

Therefore, claims 1-7, 13-17, 19-22 and 26-27 are properly rejected under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is 571.272.0627. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on 571.272.0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.



S. Anna Jiang, Ph.D.
Patent Examiner, AU 1617
May 12, 2004